

(2020) 06 SHI CK 0293

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1521 Of 2020

Pradeep Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 12-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 06 SHI CK 0293

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ankush Dass, Vivek Negi, Ajay Vaidya, Arun Raj

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner, an Assistant Excise & Taxation Commissioner, is aggrieved by notification dated 20.05.2020 (Annexure P-2), issued by respondent No.1, whereby he has been transferred from Una to EIU (H.Q) in the office of ETC, H.P., Shimla, against vacancy in public interest.

2. In support of his challenge to the impugned transfer, learned Senior Counsel for the petitioner contended that:-

2(i). Petitioner has already served for about three years (30.12.2015 to 28.01.2019) in ETC, H.P., Shimla, therefore, he should not be sent to the same place again.

2(ii). Petitioner was transferred twice in the year 2019, i.e. to AETC, Mandi on 29.01.2019 and to AETC, Una on 08.03.2019. He should not be disturbed again and should be allowed to complete his normal tenure of three years at AETC, Una. The impugned notification, transferring the petitioner in just about one year two months of his stay at AETC, Una, is therefore, liable to be quashed and set aside.

2(iii). Respondent No.3 has already served as ETO in AETC, Una for about four years, therefore, he should not be posted at the same place again under the impugned notification.

3. Learned Senior Additional Advocate General as well as learned counsel representing respondent No.3 submitted that consequent upon his promotion as Assistant Excise & Taxation Commissioner, respondent No.3 was promoted as such in Una in public interest, vide notification dated 20.05.2020 (Annexure P-3), where he has already joined. A government official can be employed in any manner required by the Authority and who should be transferred where, is a matter for the appropriate authority to decide. Normal tenure of service prescribed under the transfer policy is not applicable in case of officials holding Class-I post, in view of following para 10 of the Transfer Policy:-

"Government can transfer any officer/official at any time irrespective of stay, in view of administrative exigency, in the public interest. However, normally the tenure/stay of an officer/official at one station shall be three years which will not be applicable to the officers of IAS/HPAS/HPFS, other Allied Services and all Class-I & II Officers."

4(i). While relying upon the judgments rendered by the Hon'ble Supreme Court in E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; B. Varadha Rao vs. State of Karnataka, (1986) 4 SCC 131; Union of India and others vs. H.N. Kirtania, (1989) 3 SCC 445; Shilpi Bose (Mrs.) and others vs. State of Bihar and others, 1991 Supp (2) SCC 659; Union of India and others vs. S.L. Abbas, (1993) 4 SCC 357; Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra CH. Bhattacharjee and others, (1995) 2 SCC 532; State of M.P. and another vs. S.S. Kourav and others, (1995) 3 SCC 270; Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; Abani Kanta Ray vs. State of Orissa and others, 1995 Supp. (4) SCC 169; National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574; Public Services Tribunal Bar Association vs. State of U.P. and another, (2003) 4 SCC 104; Union of India and others Vs. Janardhan Debanath and another, (2004) 4 SCC 245; State of U.P. vs. Siya Ram, (2004) 7 SCC 405; State of U.P. and others vs. Gobardhan Lal, (2004) 11 SCC 402; Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299; Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592; Union of India and others vs. Muralidhara Menon and another, (2009) 9 SCC 304; Rajendra Singh and others vs. State of Uttar Pradesh and others, (2009) 15 SCC 178; and State of Haryana and others vs. Kashmir Singh and another, (2010) 13 SCC 306, this Court in CWP No.4460 of 2019, decided on 8.6.2020, has held as under:-

"3. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then

he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to "proper place". It is for the administration to take appropriate decision.

4. Even the administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redressal but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. Even if the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

5. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

6. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the court is competent to go into the matter to find out the real foundation of transfer. The court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

7. It is settled law that transfer is an incidence of service and the authority, as long as it acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, has unfettered

powers to effect transfer subject, of course to certain disciplines.....

25. From the catena of authorities referred to above, it can be summed up that the judicial review of administrative order of transfer can only be interfered with when the same is actuated with malafide or based on extraneous consideration or is against professed norms or the same could be termed as punitive and is in lieu of any punishment....."

4(ii). In the backdrop of above legal position, in the facts of the instant case, noticeably there are no allegations of mala fides against the respondents in issuing the impugned notification. Earlier transfer of the petitioner ordered on 28.01.2019 to Mandi was cancelled vide notification dated 07.02.2019 and he awaiting his posting, was adjusted at Una, vide notification dated 08.03.2019. Admittedly, the petitioner is holder of Class-I post. Even the non-statutory Transfer Policy does not prescribe any fixed tenure at a place of posting for holder of Class-I post. Both the petitioner as well as respondent No.3 are serving as Assistant Excise & Taxation Commissioner, which is a sensitive post. It is for the employer, i.e. respondents No.1 and 2, to utilize the services of its Class-I officials at any place as deemed fit by it in public interest and in accordance with law. Personal difficulties, if any, being faced by the petitioner can at best be pointed out to the Competent Authority. The notification in question has been issued in public interest and does not call for any interference.

This writ petition, therefore, lacks merit and is accordingly dismissed alongwith pending miscellaneous application(s), if any.